IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.936 OF 2004
IN
NOTICE OF MOTION NO.3995 OF 2004
IN
L.C.SUIT NO.3046 OF 2003

Bhagwanji Kanji Mistry).. Appellant

Versus

Vasudev Raghuvir Samant and others).. Respondents

Mr.Y.S.Jahagirdar with Mr.S.K.Mali for the Appellant.

Mr.G.V.Murti with Mr.Aditya Chitale for Respondent Nos.1, 4 to 11, 14 to 17, 19 and 20.

Mr.J.Xavier for Respondent Nos.12 and 13.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 30TH NOVEMBER 2004

P.C.:

. In this Appeal From Order, the order passed in Notice of Motion No.3995 of 2004 has been challenged. It appears that an earlier Motion being Notice of Motion No.3091 of 2003 had been filed by the Plaintiffs for certain reliefs enumerated as prayer clauses (a)(i), (ii) and (iii). This Notice of Motion was withdrawn after the order passed on the Motion was challenged in this Court. The Motion came to be withdrawn as stated in the order dated 28th July 2004 of this Court.

2. It appears that while deciding Notice of Motion No.3995 of 2004 which contains only one prayer, the Motion has been made absolute in terms of prayer clauses (a) and (b) (i) and (ii). These prayers are not found in the Motion. Therefore, it is necessary to remand the matter back for Notice of Motion No.3995 of 2004 to be reheard. The trial Court will rehear the Motion uninfluenced by the observations made in the earlier order dated 30th September 2004. The parties may make a representation to the trial Court to dispose of the Motion expeditiously.

3. The parties will maintain status as of today. No construction work will be commenced or proceeded with till the Notice of Motion is heard.

4. Appeal From Order disposed of accordingly.

5. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1284 of 2004 and the same is disposed of accordingly.

6. Parties to act on an authenticated copy of this order.